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SUBJECT: NICARAGUA: U.S. CITIZEN PRIVATE PROPERTY DISPUTES ON THE
RISE

REFS: A) 07 MANAGUA 1789, B) 07 MANAGUA 1663, C) 07 MANAGUA 2376,
D) 07 MANAGUA 889

SUMMARY

¶1. (SBU) Private property disputes involving U.S. investors are on the rise along the Pacific Coast and elsewhere in Nicaragua. Several U.S. investors have sought the Embassy's assistance to protect their property rights because they lack confidence in Nicaraguan law enforcement institutions. The Government of Nicaragua (GON) has responded to requests for assistance, but only after considerable pressure from U.S. citizens or the Embassy. The GON's slow and/or reluctant efforts to resolve these disputes only heightens the perception that real estate investments in Nicaragua are fraught with more risk than reward.

U.S. PRIVATE PROPERTY DISPUTES ON THE RISE

¶2. (SBU) Since 2007, U.S. citizens with beachfront property along the Pacific Coast and valuable real estate elsewhere in Nicaragua have sought U.S. Embassy assistance to deal with insidious legal and extra-legal disputes.

WEAK ENFORCEMENT OF PROPERTY RIGHTS

¶3. (SBU) Weak enforcement of property rights in Nicaragua increasingly concerns U.S. property owners. Several have expressed frustration that they have taken appropriate legal measures to establish their ownership, but GON officials and municipalities are either reluctant or unwilling to enforce the law to protect their rights. We sense that the growing number of intractable property disputes may well be scaring away investors.

¶4. (SBU) Nicaraguan legal scholars and attorneys allege that judges, mayors, and police in towns outside of Managua fail to protect U.S. citizen property rights because they seek bribes or are actually assisting land trafficking mafia groups looking to steal property. One expert notes the police and judges in municipalities outside of Managua simply lack the ability to effectively deal with these issues. Following is a summary of disputes that we are monitoring closely:

ARENAS BAY BEACHFRONT HOME DEVELOPMENT

¶5. (SBU) In November 2006, U.S. real estate company Grupo Del Sol initially sought Embassy assistance to protect their \$ 88 million beachfront housing development in Tola, including the \$ 8 million Arenas Bay beachfront home development project, from squatters backed by the senior Sandinista National Liberation Front official Lenin Cerna (Refs A-B). This dispute received extensive media coverage in May and June 2007 when U.S. citizen Armel Gonzalez, a former investor in the Arenas Bay project, went public with a recorded extortion attempt by former Sandinista National Liberation Front (FSLN) congressman Gerardo Miranda, who offered to resolve the dispute for \$500,000. Miranda and other GON officials subsequently and successfully sued Gonzalez for slander. The scandal forced Gonzalez to withdraw his investment from the Arenas Bay project and leave Nicaragua because of security concerns.

¶6. (SBU) Now that the media coverage of the scandal has dissipated, Grupo del Sol has met frequently with GON officials to resolve this dispute, and the Embassy has continually pressured the Ortega administration to protect the company's property rights. On March 25, Gail Geerling, Business Development Director for Grupo del Sol, told Econoff that the company agreed to transfer a parcel of beachfront property to the GON to resolve the dispute. Geerling added that she and Attorney General Hernan Estrada would hold a joint press conference to announce the resolution of the dispute once the deal is concluded to help shore up Nicaragua's image among foreign investors.

MARINA PUERTA DEL SOL

¶7. (SBU) In January 2007, U.S. real estate developer Roberto Membreno sought Embassy assistance to protect his \$20 million Marina Puerta del Sol beachfront resort in the department of Chinandega (Ref D). On January 24, 2007, a group of armed squatters organized by Jerez Lacayo took control of a strip of land belonging to Mr. Membreno. Lacayo asserted that he owned the property because the former owner of the land owed him money. The police initially removed the squatters from the land but Jerez received a court order in February 2007 which allowed him to retake possession of the property. In March 2007, Membreno received a nullification order to overturn the local court's previous decision but the squatters remained on the land.

¶8. (SBU) In April 2007, the Chinandega municipal court requested the cancellation of Mr. Membreno's titles and the Office of the Property Superintendent indeed cancelled them. Mr. Membreno subsequently contacted President Ortega and Attorney General Estrada in May for assistance. Estrada said the court's actions were "inappropriate" and ordered the Chinandega municipal court to retry the case. The court reversed its decision and returned the titles to Mr. Membrano in August 2007. In October 2007, Membrano filed another lawsuit to remove the squatters. Lacayo subsequently filed a competing lawsuit to challenge Membrano's case. The squatters remain on the property until the Chinandega municipal court rules on the competing lawsuits.

PELICAN EYES

¶9. (SBU) On October 16, 2007, U.S. citizen Chris Berry, the owner of Pelican Eyes Hotel in the popular coastal town of San Juan del Sur, contacted Econoff to inform him of his ongoing land dispute with a prominent local family, the Sandinos. Berry said this dispute began in 2005 when the Sandino family laid claim to his entire property. Berry explained that a municipal court in Rivas had ruled in his favor in 2006, but an appeals court overturned that decision in 2007 and awarded the Sandino family title to his land and to that of 42 other property owners, including at least 20 U.S. citizens. The Supreme Court upheld the appeals court's ruling in 2008, but Berry has requested a constitutional review of the decision. An attorney/businessman who has reviewed the case on behalf of the Sandino family has asserted to us that Berry faces some significant vulnerabilities, as the property was granted to him by municipal authorities who lacked power to do so.

SPINNETT FAMILY: SAN JUAN DEL SUR

¶10. (SBU) On November 26, 2007, U.S. citizen Steve Spinnett contacted Econoff alleging that squatters, judges and GON officials associated with former President Arnaldo Aleman were conspiring to take possession of his family's beachfront property near San Juan Del Sur. In January 2007, the Spinnett family donated a portion of its land to a missionary group. In March 2007, a municipal judge from Rivas accompanied squatters to facilitate their taking possession of Mr. Spinnett's property and the land he donated. The Spinnett family filed a lawsuit in the Rivas municipal court in April 2007 to secure the return of both properties. On March 10, 2008, Mr. Spinnett informed Econoff that the presiding judge in his case hinted that she would order the squatters removed if he were to pay her a bribe. Spinnett declined and the judge has delayed issuing a decision on his case. On April 15, Spinnett asked the Embassy to urge the GON to remove the squatters from his property.

STEVE WALSH: SAN JUAN DEL SUR

¶11. (SBU) On January 14, 2008, U.S. citizen Steve Walsh contacted Econoff to seek assistance with an ongoing property dispute he has with a French businessman, Clement Poncon. Walsh reported that he has title to beachfront property in San Juan Del Sur but he is not allowed access to it by Poncon because the French businessman also claims ownership of the property [Note: It appears that both Walsh and Poncon bought the disputed property from the same land trafficker. End note]. Walsh has filed a lawsuit in civil court against Poncon to protect his property, but he asked the Ambassador to speak with the French Ambassador to Nicaragua, Thierry Fraysee, to negotiate a settlement. On March 18, the Ambassador met with his French counterpart who asserted that Poncon was willing to negotiate a settlement. On April 4, the Ambassador met with Poncon who offered to resolve the dispute if Walsh agreed to a land swap and \QTQ2ght Embassy assistance in her efforts to remove land invaders from property located near the Augusto Sandino International Airport in Managua. On February 16, she reported that the local Citizens Power Councils (CPC) leaders in her neighborhood were organizing squatters to invade and take over additional property. On February 17, EmbOffs contacted the National Police and Prosecutor General's Office to solicit their support in protecting Mrs. Gonzalez' property. On February 29, the Ambassador called Attorney General Estrada to ask his office to take action to remove the squatters and prevent further invasions on Gonzalez' property.

¶13. (SBU) On March 5, the Office of the Prosecutor General lodged a criminal complaint against the squatters for violating Mrs. Gonzalez' property rights. On March 10, Gonzalez informed us that a judge ordered the police to arrest and incarcerate 12 of the squatters who organized the illegal invasion of her property. On April 11, Gonzalez said that her attorney received information that Estrada and the presiding judge in her case struck a deal not to take any further action and they agreed to free the 12 criminals because President Ortega did not want this issue to negatively impact upcoming municipal elections.

LAGUNA DE APOYO

¶14. (SBU) On March 26, U.S. citizen Jeffrey Finch, a developer and co-owner of a hotel and ecotourism project called Los Congos located in Laguna de Apoyo National Park in the Department of Granada, contacted the Property Office to complain that his company's application for an environmental permit has been pending for almost 2 years with the Ministry of Environment and Natural Resources. In addition, he noted that the mayor of nearby Diria claims that the property is municipal land and has trespassed on the property several times, either removing natural resources (trees, rocks, soil) or allowing tourists and squatters to temporarily reside there without the permission of Los Congos. Finch and his partners are working with the mayor and GON to resolve these issues, but he said that he would request Embassy assistance if necessary.

BEACHFRONT PROPERTY IN CARAZO: REX BENNETT

¶15. (SBU) On March 28, 2008, U.S. citizen Rex Bennett requested Embassy assistance to protect his beachfront property in the Department of Carazo. Bennett reported that a land trafficker named Diomedes Diaz, who is also allegedly a member of the FSLN Party, invaded his property with squatters and physically threatened Bennett if he did not leave the land [Note: Bennett reported that Diaz put a handgun to his head and threatened to kill him if he did

not leave the property. End Note]. Bennett left the property and filed a lawsuit against Diaz in the Carazo District Court to remove him and the squatters from his property, but the court has yet to consider the case.

FLOR DE MAYO

¶16. (SBU) On April 14, U.S. citizen Philip Christopher, the co-owner of a beach resort called Flor de Mayo near San Juan del Sur, asked for the Embassy's assistance to help remove 200 squatters from his property. Christopher said that he has been dealing with squatters for two years and alleges that a land trafficking mafia is attempting to take over his property. He has filed complaints with the police and local courts to remove the squatters. Christopher said the courts have ruled in his favor, but they have not instructed the local police to remove the squatters. He added that he met with Attorney General Hernan Estrada in August 2007 to seek the GON's help to remove the squatters. Estrada asked Christopher for patience and assured him that he would look into this issue. On May 19, Estrada sent a letter to the Ambassador alleging that three U.S. citizens were involved in attempting to take over Mr. Christopher's property.

CHRISTOPHER EVANS CHARTIER

¶17. (SBU) On May 1, local newspaper "El Nuevo Diario" reported that the attorney of U.S. citizen Christopher Evans Chartier, Hector Jose Lacayo Paez, falsified Evans' signature to provide himself power of attorney over Evans' legal affairs in Nicaragua and sell his property to a third party. According to press reports, Mr. Evans was out of the country when Paez sold his property. The Prosecutor General's Office is prosecuting Paez and other lawyers involved in the illegal sale of the property and the falsification of public documents.

GON DEALS WITH DISPUTES ONLY UNDER PRESSURE

¶18. (SBU) The GON has investigated several property disputes involving U.S. landowners, but only under constant pressure from U.S. citizens or the Embassy. Indeed, Gail Geerling believes the GON will act under pressure to protect U.S. citizen property because the Ortega administration is sensitive to negative publicity about foreign investment. Geerling also suggests that U.S. investors become more integrated into local communities -- to develop allies in order to protect their property -- by providing jobs, funding medical clinics or schools, or supporting the police with equipment donations.

COMMENT

¶19. (SBU) GON officials are aware of the growing number of property disputes, and claim they are doing all that they can to protect Nicaraguan and foreign investors (Ref C). The situation may, however, already be spinning out of control. President Ortega and fellow Sandinistas returned to government carrying heavy historical baggage, having confiscated 28,000 properties before leaving government in 1990. In addition, Ortega is on the political hook with political groups throughout the country to deliver on promises of land. In other instances, local criminals sense opportunity in the confusion of the Sandinista government and a crumbling judicial system. Also, many U.S. investors who rushed to make investments in then-cheap beachfront property in the boomtown atmosphere of the mid 1990s may have in fact been incautious about assuring the validity of their titles. In many cases the chain of ownership was disrupted by Sandinista "agricultural reform" nationalizations, and less than transparent subsequent transfers, aggravated by the destruction in many cases of official records. That said, the GON's slow and/or reluctant response to resolve disputes only heightens the perception that real estate investment in Nicaragua is fraught with more risk than reward. GON officials such as Attorney General Estrada are hard pressed to side with U.S. investors against Nicaraguans linked to the Sandinista party. As more and more would-be foreign investors express serious problems protecting their properties, the word is spreading among investors in Central America that Nicaraguan tourism is rapidly losing its place in the sun. End Comment.

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